

REPRESENTATIVE FOR PETITIONER:

Galen K. Kauffmann, Attorney

REPRESENTATIVE FOR RESPONDENT:

Cathy Searcy, Elkhart County Assessor¹

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

CHAIN REACTION BICYCLE)	Petition No.: 20-015-14-2-8-00001
PROJECT, INC.)	
)	
Petitioner,)	Parcel No.: 20-11-10-313-013.000-015
)	
v.)	
)	Elkhart County
ELKHART COUNTY)	
ASSESSOR,)	Elkhart Township
)	
Respondent.)	Assessment Year 2014

Appeal from the Final Determination of
Elkhart Property Tax Assessment Board of Appeals

April 27, 2016

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

¹ Beth H. Henkel appeared in the appeal as counsel for the Respondent, but she did not attend the hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The Petitioner uses its bicycle shop for multiple purposes, some of which qualify as charitable under Ind. Code § 6-1.1-10-16(a), and others of which do not. Because the Petitioner did not show that the charitable or other exempt uses predominate, the shop does not qualify for an exemption.

PROCEDURAL HISTORY

2. On May 7, 2014, the Petitioner filed an exemption application, claiming it owns, occupies, and uses its bicycle shop and personal property for charitable and educational purposes. The Elkhart County Property Tax Assessment Board of Appeals (“PTABOA”) issued a determination denying the application. The Petitioner then filed a Form 132 petition with the Board.²

HEARING FACTS AND OTHER MATTERS OF RECORD

3. On November 19, 2015, our designated administrative law judge, Joseph Stanford (“ALJ”), held a hearing. The following people were sworn as witnesses: Kathy Nofziger Yeakey, the Petitioner’s executive director; Leslie Gustafson-Zook, the chairman of the Petitioner’s board; and Elkhart County Assessor Cathy Searcy.
4. The Petitioner did not offer any exhibits. The Respondent offered the following exhibits:
Respondent Exhibit A: Excerpts from the Petitioner’s exemption application, including drawings of the shop,
Respondent Exhibit B: Information from the Petitioner’s website,
Respondent Exhibit C: Information and photographs from the Petitioner’s Facebook Page,

² A taxpayer must file an appeal with the Board within 45 days after notice is given of a determination denying an exemption. *See* I.C. § 6-1.1-15-3(d). The PTABOA’s Form 120 Notice of Action on Exemption Application is dated July 11, 2014. The Petitioner did not file the Form 132 petition until August 29, 2014, barely outside the 45-day window. In a cover letter attached to the petition, however, Petitioner’s counsel indicated (1) that someone at the Respondent’s office informed him the Form 120 notice had been returned undelivered, and (2) that he was given a copy of that notice on August 8, 2014. The Respondent did not argue that the Form 132 petition was untimely. Thus, we consider the Petitioner’s Form 132 petition as timely.

Respondent Exhibit D: Copy of November 17, 2015 email from Beth Henkel, Assessor's Memorandum of Law and Case Authority, witness and exhibit list, and Respondent's Tender of Exhibits.

5. The record also includes the following:
 - Board Exhibit A: Form 132 petition
 - Board Exhibit B: Hearing notice
 - Board Exhibit C: Hearing sign-in sheet
 - Board Exhibit D: Pre-hearing Order
 - Board Exhibit E: Notice of Appearance for Galen Kauffmann
 - Board Exhibit F: Notice of Appearance for Beth Henkel
6. The property is located at 501 East Washington Street in Goshen. Neither the Board nor the ALJ inspected it.
7. The PTABOA determined that the Petitioner's land, improvements, and personal property were 100% taxable. The Petitioner claims that all those items should be completely exempt.

OBJECTIONS

A. The Respondent's objection

8. The Respondent objected to the Petitioner's witnesses testifying on grounds that the Petitioner did not give her a witness list in advance of the hearing. The Petitioner's counsel acknowledged that he did not provide a witness list but argued that "the county has taken care of that for me," because the Respondent listed "any and all witnesses identified by any party" on her own witness list. *Kaufmann argument; Resp't Ex. D.* The ALJ took the objection under advisement.
9. Our procedural rules require each party to give all other parties a list of witnesses and exhibits at least 15 business days before the hearing. 52 IAC 2-7-1(b)(2). Our exchange rule allows parties to be better informed and to avoid surprises. It also promotes organized, efficient, and fair consideration of the issues. We may exclude evidence based on a party's failure to comply with the exchange rule where it appears that admitting the

evidence would prejudice the opposing party. *See* 52 IAC 2-7-1(f). But we will not automatically impose the harsh sanction of exclusion where the opposing party is unlikely to have been surprised or prejudiced.

10. The Petitioner apparently argues that the Respondent was neither prejudiced nor surprised because the Respondent identified Nofziger Yeakey and Gustafson-Zook on her own witness list. We fail to see how a broad reference to “any and all witnesses identified by any party” suffices to name any specific person, much less the two people in question. On the other hand, the Respondent did not articulate any specific prejudice or surprise. It is hardly surprising that the Petitioner would call its executive director or the chairman of its board of directors to explain the purposes for which it was organized and how it operated. In fact, one of the witnesses, Gustafson-Zook, signed the Petitioner’s exemption application.
11. In any case, the witnesses’ testimony largely expanded on information provided in the Petitioner’s exemption application regarding its mission, and the activities performed at its bicycle shop. The Respondent did little to cross-examine Nofziger Yeakey and did not cross-examine Gustafson-Zook at all. Indeed, the Respondent does not appear to dispute the witnesses’ factual testimony, which centered on what happened at the shop, but rather contests whether those activities qualify as charitable or educational within the meaning of the relevant exemption statute.
12. We do not dismiss the Petitioner’s blatant disregard of our procedural rules. In many cases, such behavior will lead to the exclusion of proffered evidence. But given the lack of unfair surprise or prejudice to the Respondent, we find that excluding the testimony of Nofziger Yeakey and Gustafson-Zook would be unduly harsh. And the Respondent did not ask for a less drastic remedy. Under those circumstances, we overrule the Respondent’s objection.

B. The Petitioner's objections

13. The Petitioner objected to the Respondent's exhibits, albeit after the ALJ had already admitted them, on grounds that the Respondent failed to provide copies of those exhibits 15 business days before the hearing. We overrule that objection. As the Respondent correctly noted, while parties must exchange witness and exhibit lists 15 business days before a hearing, they need only exchange copies of the exhibits themselves five business days before the hearing. *See* 52 IAC 2-7-1(b)(1). The Petitioner did not claim the Respondent missed that deadline. In addition, the Petitioner can hardly claim surprise that the Respondent would introduce portions of the exemption application that gave rise to this appeal (Ex. A) or excerpts from the Petitioner's own web and Facebook pages (Exs. B-C).

14. The Petitioner also objected to the Respondent's witness list, which is part of Exhibit D, on grounds that it was not exchanged 15 days before the hearing. We overrule the objection. First, the Respondent's counsel included a certificate of service indicating she mailed the list to the Petitioner's counsel on October 26, 2015, which was 18 business days before the hearing.³ Second, the list itself is not evidentiary; it merely served to notify the Petitioner of the witnesses the Respondent intended to call.

SUMMARY OF THE PETITIONER'S CASE

15. The Petitioner is exempt from federal income tax under section § 501(c)(3) of the Internal Revenue Code. Its mission is to make transportation available to homeless, unemployed, and underemployed people by allowing them to work to obtain bicycles. *Nofziger Yeakey testimony*.

16. The Petitioner owns, occupies, and uses the property under appeal for charitable and educational purposes. The property includes a two-story shop that is open approximately 14 hours per week. A few part-time employees and some volunteers staff it. The

³ Where a party serves its witness or exhibit list by United States Mail, it must deposit them in the mail three days before the deadline. 52 IAC 2-7-1(c).

Petitioner receives donated bikes, which it solicits through email, letters, word of mouth, and its website. It took in 245 donated bikes in 2014 and 285 through the hearing date in 2015. The Petitioner reconditions the donated bikes and sells them. It allows customers the option of volunteering in the shop to earn credits toward buying reconditioned bikes or repairing their existing bikes. The customers perform odd jobs around the shop that do not require any skill, such as sorting and cleaning bike parts. The Petitioner also offers to train them to repair bikes. A customer generally must work parts of 2-to-2 ½ days to earn enough credits for a bike. *Nofziger Yeakey testimony.*

17. The Petitioner sells bikes for money in addition to bartering them for work. According to the Petitioner, the retail component is necessary to sustain its charitable work. In 2014, the Petitioner sold 135 bikes and bartered 84 bikes for work. Through the hearing date in 2015, those numbers were 82 and 68, respectively. The average sale price of a bike is \$75. *Kauffmann argument; Nofziger Yeakey testimony.*
18. The Petitioner works with other organizations in Goshen. Two medical service providers approached the Petitioner about allowing low-income patients to work off at least a portion of their bills through volunteering in the shop. The Elkhart County Department of Corrections similarly sends offenders to the Petitioner's shop to earn community service hours. At the same time, they can earn credit for a bike. In addition, the Petitioner teams with two mental health organizations. Both refer clients who need transportation to the Petitioner, where they can buy bikes or barter work for them. *Nofziger Yeakey testimony.*
19. The Petitioner's circumstances differ from the taxpayers in the cases the Respondent cites—*State Bd. of Tax Comm'rs v. Fort Wayne Sports Club, Inc.*, 147 Ind. App. 129, 258 N.E.2d 874 (1970) and *Nat'l Ass'n of Miniature Enthusiasts (NAME) v. State Bd. of Tax Comm'rs*, 671 N.E.2d 218 (Ind. Tax 1996). Those entities claimed exemptions for educational purposes, while the Petitioner also has a charitable purpose. *Nofziger Yeakey* would not want to be involved with the Petitioner if all it did was fix bikes and sell them to the public; the work-to-own component drives her interest. Similarly,

Gustafason-Zook would not be interested in a regular bike shop; he is most interested in the community aspect of the Petitioner's operation. *Kauffmann argument; Nofziger Yeakey testimony; Gustafason-Zook testimony.*

SUMMARY OF THE RESPONDENT'S CASE

20. According to the Petitioner's website, it is "a non-profit promoting bicycling in the Goshen community through its community bicycle repair shop, educational programs & opportunities, advocacy for bicycle transportation, and increased access to bicycles for people with low income." A diagram of the shop, which the Petitioner attached to its exemption application, depicts a workshop, an office, areas for displaying, storing, and selling bikes, and an area for tires and tubes. It does not include classrooms. Although the application indicates that the Petitioner's personal property was assessed at \$540, the Petitioner did not identify or describe that property. *Resp't Exs. A-B; Searcy testimony.*
21. Exemptions are strictly construed against taxpayers and in favor of taxation. According to the Respondent, the Petitioner has not shown it either provides education related to courses found in tax-supported schools or relieves human want and suffering to the extent necessary to qualify for exemption. The Petitioner has a good cause. But it does not qualify as either charitable or educational; it is more of a social group or club. In that respect, this appeal is analogous to several cases in which courts and the Board have rejected exemption claims. *Searcy argument; Resp't Ex. D (citing Fort Wayne Sports Club, NAME, and Twyckenham Hills Community Club, Inc. v. St. Joseph County PTABOA, pet. no. 71-026-03-2-8-00003 (IBTR August 11, 2004)).*

ANALYSIS

22. Although tangible property in Indiana is generally taxable, the legislature has exercised its constitutional power to exempt certain types of property from taxation. *See Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004). A taxpayer bears the burden of proving that its property qualifies for exemption. *Id.* All or part of a building that is owned, occupied, and

predominantly used for educational, literary, scientific, religious, or charitable purposes is exempt. See I.C. §6-1.1-10-16(a); I.C. §6-1.1-10-36. That exemption extends to the land on which the building is situated and to personal property that is owned and used in such a manner that it would qualify for exemption if it were a building. I.C. §6-1.1-10-16(c) and -(e). A property is predominantly used or occupied for exempt purposes if it is used or occupied for those purposes more than 50% of the time that it is used or occupied in the year that ends on the assessment date. I.C. § 6-1.1-10-36.3(a).

23. Because exemption statutes release properties from bearing their fair share of the cost of government and disturb the equality and distribution of the common burden of government, they are strictly construed against the taxpayer. *Indianapolis Osteopathic Hospital*, 818 N.E.2d at 1014. Nonetheless, the term “charitable purpose” must be defined and understood in its broadest constitutional sense. *Knox County Property Tax Assessment Bd. of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 182 (Ind. Tax Ct. 2005). A charitable purpose will generally be found if: (1) there is evidence of relief of human want manifested by obviously charitable acts different from the everyday purposes and activities of man in general, and (2) there is an expectation that a benefit will inure to the general public sufficient to justify the loss of tax revenue. *Id.* Worthwhile activity or noble purpose alone, however, is not enough. See *NAME*, 671 N.E. 2d at 220 (“Operating a museum for the public and enhancing the public’s knowledge about miniatures, while a noble endeavor, does not relieve human want and suffering.”).

24. Indiana Courts have applied those same basic principles in interpreting the term “educational” under Ind. Code § 6-1.1-10-16(a) and its predecessor statutes. Education, as that term is broadly understood, can occur anywhere, including private homes. Thus, to avoid irrationally applying the exemption statute, a more restrictive definition of “educational purposes” is required. *Fort Wayne Sports Club*, 258 N.E.2d at 881 (interpreting predecessor to I.C. § 6-1.1-10-16). A taxpayer must demonstrate a public benefit by showing that it provides education that is the “substantial equivalent” to instruction offered in Indiana’s tax-supported institutions. *Dep’t of Local Gov’t Fin. v.*

Roller Skating Rink Operators Ass'n, 853 N.E.2d 1262, 1266 (Ind. 2006). The closer the taxpayer's activity is to traditional educational programs offered in public schools, the more obvious the public benefit. But a taxpayer need not offer courses that are directly analogous to courses taught in public schools; rather, the taxpayer's courses simply need to be related to public-school offerings. *Id.* (citing *Trinity School of Natural Health v. Kosciusko County Prop. Tax Assessment Bd. of Appeals*, 799 N.E.2d 1234, 1238 (Ind. Tax Ct. 2003)). And the taxpayer need only relieve the state's burden of providing public education to "some limited extent." *Id.* (quoting *Trinity School*, 799 N.E.2d at 1238).

25. The evidence shows that the Petitioner was organized for several purposes, including promoting and advocating for bicycling and bicycle transportation. By itself, that does not qualify as a charitable purpose. It is akin to the taxpayer's purposes in *NAME*—operating a museum for the public and enhancing the public's knowledge about miniatures. While noble, those activities do not relieve human want and suffering. *See NAME*, 671 N.E.2d at 221.
26. The Petitioner, however, also exists to make transportation available to homeless, unemployed, and underemployed people by allowing them to work to obtain bikes. And it uses its shop to further that purpose by letting customers barter their work for bikes. It also teams with other charitable organizations to help indigent people receive services they could not otherwise afford. Those activities relieve human want and suffering and provide a public benefit sufficient to offset the loss in tax revenue.
27. But those charitable activities are only part of what happens at the shop. The Petitioner also makes retail sales to the public at large. In fact, the majority of the bikes the Petitioner reconditioned and sold in 2014 and 2015 were retail sales rather than barter in exchange for work. And the \$75 average price is more than nominal. It may even reflect the market price for reconditioned bikes; there is no evidence on that point one way or the other.

28. Given those facts, and absent evidence to the contrary, we infer that the Petitioner generally competes with other sellers of used bikes. Competition with for-profit businesses may not be dispositive of whether an entity is entitled to exemption, but it is relevant. *See Indianapolis Osteopathic Hospital*, 818 N.E.2d at 1018 (quoting *Middle Tennessee Medical Cntr. v. Assessment Appeals Comm'n of the State of Tennessee*, 1994 Tenn. App. LEXIS 43, 1994 WL 32584 *4 (Tenn. Ct. App. 1994)). That is particularly true here, where the Petitioner owns, occupies, and uses the property to pursue a mix of charitable (providing affordable transportation to homeless, unemployed, and under-employed people) and non-charitable (promoting bicycling) purposes. Under those circumstances, we do not find that the retail sales were simply incidental to, or part of, the Petitioner's charitable endeavors.
29. Thus, we have evidence of a mixture of charitable and non-charitable activities at the subject property. The question is, which one is predominate? That is a difficult question, because some activities arguably serve the Petitioner's charitable and non-charitable purposes at the same time. The parties' all or nothing approach to the exemption does not help that inquiry. As a result, we have little evidence from which to break down the shop's use between charitable and non-charitable activities, a clear detriment to the Petitioner, who carries the burden of proof. At most, we have Nofziger Yeakey's testimony that more bikes were sold for money than were bartered for work in 2014 and 2015. That is an imperfect methodology for the task, and it does not even cover most of the relevant period for the assessment year at issue (March 2, 2013 to March 1, 2014). Nonetheless, it is the best evidence we have, and it weighs against finding that the shop was predominantly used for charitable purposes.
30. The Petitioner's claim for an educational-purposes exemption is even less compelling. Aside from vague references that it provides training to some customers on how to repair bikes, the Petitioner identified no activities that may be considered educational even in the broadest sense of that term, much less activities that relate to the type of education offered in tax-supported institutions. Finally, we note that the Petitioner did not even identify the personal property it claims as exempt, much less explain how it was used.

For those reasons, we find that the Petitioner failed to prove it was entitled to an exemption for any of the property at issue.

SUMMARY OF FINAL DETERMINATION

31. Because the Petitioner failed to prove it predominantly used its property for charitable or educational purposes, it is not entitled to an exemption for 2014.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.